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IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

ALLEN MORGAN,
SUPERINTENDENT, KNOX COUNTY SCHOOLS,
Petitioner,
v.
CHRIS L., A MINOR BY NEXT FRIEND, MIKE L.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

In his petition, the Superintendent of the Knox County Schools demonstrated that the extraordinary order of the federal courts in this case purporting to divest the Tennessee Juvenile Court of the opportunity to review the juvenile complaint filed against respondent as mandated by state law warranted review by this Court. In particular, petitioner argued that the decision below conflicts with the logic and reasoning of the Fourth Circuit in *Virginia Department of Education* v. *Riley*, 106 F.3d 559 (4th Cir. 1997), and this Court's decisions in *Hendrick Hudson District Board of Education* v. *Rowley*, 458 U.S. 176 (1982) and *Honig* v. *Doe*, 484 U.S. 305 (1988). Moreover, the question of whether the Individuals with Disabilities Education Act ("IDEA") authorizes interference with a state's juvenile justice system is a question of profound importance both to the public schools and the juvenile courts.

Respondent desperately opposes certiorari at all costs, even taking the extreme, and ultimately self-defeating, tack of arguing the case is moot. The reply to respondent's primary contention is simple: either the entire case should be dismissed under *Arizonans for Official English* v. *Arizona,* 117 S. Ct. 1055, 1072 (1997), or the case should be granted so that the vital issue presented concerning the scope of a federal court's remedial authority under the IDEA can be decided by this Court.

1. Respondent goes to great lengths (Opp. 4-6) to establish that this case has become moot. It is true that the juvenile petition has been dismissed (albeit solely because respondent is no longer a juvenile—not because of the decision below).[1] It also is true that respondent for now has dropped out of school. Still, it is not clear that the lawsuit is moot. *Cf. Honig* v. *Doe,* 484 U.S. at 318-20 (former student's claim is not moot because he still is protected by the Act). Respondent remains subject to the IDEA and can return to school in Knox County at any time prior to his 21st birthday. Thus, the injunction against reporting him to criminal authorities for school-related activities will remain viable for three more years. This residual effect of the underlying decree satisfies the minimal injury in fact requirement for Article III and ensures that the Court, by reversing, could grant relief that would have "effect." *Id.* ("capable of repetition yet

[1] Respondent implies (Opp. 4) that the mootness issue arose solely because petitioner did not timely file a rehearing petition or seek a stay. In fact, the mootness issue began to arise in January 1997, when respondent turned 18. Resp. App. 3a. Of course, if respondent genuinely believed that his departure from school mooted this dispute, his counsel had a duty to bring that to the court's attention immediately. Robert L. Stern *et al., Supreme Court Practice* 721 (7th ed. 1993) (and cases cited therein). He did not do so and the Sixth Circuit decided the case under precisely the same circumstances that respondent now asserts mooted this dispute. If the case is moot, it should be dismissed so that it has no consequences. If it is not moot, it should be reviewed by this Court.

evading review"). *Cf. Church of Scientology* v. *United States,* 506 U.S. 9, 12 (1992).

If, however, petitioner is incorrect and the case is moot, then it is absolutely clear that the proper course now is not to deny the petition. The appropriate disposition of the petition is to grant it, vacate the judgment of the court of appeals and remand for dismissal of the underlying cause of action. Given respondent's voluntary action in mooting the proceeding prior to final resolution of the dispute, the case should have no collateral consequences. This result is compelled by this Court's recent decision in *Arizonans for Official English, supra.*

In that case, the Court considered the proper course to follow when the plaintiff obtained a favorable judgment and then voluntarily withdrew from state employment. The Court held that it was not proper simply to dismiss the proceeding before this Court or to deny the petition, even though the petitioners before this Court lacked standing to bring the case here. Instead, the entire proceeding had to be dismissed. Quoting the State of Arizona's brief, the Court reasoned: "It would certainly be a strange doctrine that would permit a plaintiff to obtain a favorable judgment, take voluntary action [that] moot[s] the dispute, and then retain the [benefit of the] judgment." 117 S. Ct. at 1072 (alterations in original). Here, respondent voluntarily withdrew from school after obtaining protection from juvenile proceedings by the courts below. His voluntary act, like that taken by respondent in *Arizonans for Official English* requires that the proceedings below be treated as if they never occurred.

2. If the Court concludes that this case is not moot, then the Court should grant the petition for the reasons outlined therein and summarized above. Respondents offer four responses, none of which remotely justifies denying the petition.

a. First, petitioner concocts a state law basis for the decision below. Any fair reading of the Sixth Circuit's opinion dispels this claim immediately. The opinion only

discusses the IDEA and its requirements. The decision unquestionably is based solely on that court's interpretation of federal law.

Respondent's assertion to the contrary is based purely on a throwaway citation in the opinion of the Sixth Circuit to a Tennessee appeals court decision, *In re McCann*, 1990 WL 16883 (Tenn. Ct. App. Feb. 27, 1990) (perm. app. denied). Pet. App. 11a. But even that discussion reveals that the issue being decided by the court below was the proper interpretation of the IDEA. The court of appeals plainly did not view *McCann* as a decision involving state law. To the contrary it explicitly cited *McCann* for the proposition that "[p]ursuant to *IDEA's* procedural safeguards," a school system must have a plan and internal meetings before it can initiate a juvenile court proceeding. Pet. App. 11a (emphasis added). Moreover, even if state law were coterminous with federal law, this Court would review the federal law question, where, as here, only federal authority is cited to support the decision of the court below. See *Michigan* v. *Long*, 463 U.S. 1032 (1983). In sum, respondent's reliance on state law to defeat certiorari is misplaced.

b. Respondent next argues (Opp. 9-11) that the decision in this case does not conflict with this Court's decisions in *Hendrick Hudson District School Board of Education* v. *Rowley*, 458 U.S. 176 (1982) and *Honig* v. *Doe*, 484 U.S. 305 (1988). But respondent does nothing but quote platitudes from those decisions extolling the virtues of the procedures embodied in the IDEA. In the run-of-the-mill situation where a student's individualized educational situation warrants reevaluation, these procedures make sense. But when the process is interposed to undermine the functioning of the State's juvenile justice system, then the value of those procedures becomes suspect and Congress must speak clearly to allow the IDEA to interfere with the state's method of treating juveniles. Respondent nowhere argues that the "change in placement" language in the statute speaks clearly to the question presented in this case, nor could he.

Respondent argues (Opp. 11) that the clear statement principle relied upon by petitioner does not apply because the IDEA is not "Spending Clause" legislation. That argument, by itself, justifies review by this Court because the Fourth Circuit quite clearly concluded that the IDEA involved an exercise of Congress's spending power. *Virginia Dep't of Educ.* v. *Riley,* 106 F.3d 559, 566 (4th Cir. 1997).

c. Respondent argues that the decision below is correct on the merits. Of course, respondent does not deal with the clear statement requirement, which completely undermines any argument that the IDEA really justifies the result in this case. But even on their own terms, none of respondent's arguments has merit.

First, respondent asserts (Opp. 11) that the ALJ made a "finding of fact" that the filing of a Juvenile Court petition was a proposed "change of placement." This is absurd. As explained in the petition (at 6-7), the ALJ, district court and court of appeals all held that the question of whether filing a juvenile petition triggers the protections of the IDEA was a pure question of law. Respondent's attempt to convert the clear holdings below into factual findings cannot withstand even a cursory reading of those opinions.

Second, respondent asserts (Opp. 12), without citation to anything in any opinion below or anything in the record, that the filing of a juvenile charge as required by state law was a "disciplinary action." The holdings below all depended upon the interpretation of "change in placement" and the "stay-put" injunction in the IDEA, and that is the only question before this Court.

Third, respondent claims (Opp. 12-13) that the federal court's broad remedial authority under the IDEA supports the decision to order the juvenile petition withdrawn.[2]

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[2] Respondent elevates form over substance by arguing that there is no interference with the state's juvenile proceedings because the injunction merely operates against the school system. But as this

This, of course, merely begs the question. Petitioner concedes that federal courts have broad authority to remedy violations of the IDEA, but the question remains whether that authority extends to interfering with the State's juvenile justice system. Absent clear statutory authority to that effect, the decision of the Fourth Circuit in *Virginia Department of Education* v. *Riley*, 106 F.3d 559 (4th Cir. 1997), and this Court's decisions in *Rowley* and *Honig* plainly indicate that the answer is no. At a minimum, the issue is of sufficient national importance to warrant review by this Court.

d. Finally, respondent argues that this case is fact-driven. The courts below described the question they decided as a pure issue of law. Wishing the issue were a fact question does not make it so. What the holding below involves is nothing more nor less than an extraordinary exercise of federal judicial power. No doubt concerned about the sweeping nature of that decision in light of this Court's recent decisions viewing with suspicion excessive use of federal judicial power,[3] respondent shows no restraint in opposing the petition. According to him, the case is moot, the decision below is based on state law, the issue was purely factual and, in any event, his argument is correct.

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case reveals, the mere filing of the IDEA lawsuit caused the juvenile court to halt its proceedings. Resp. App. 3a. Moreover, the cases involving federal court injunctions against state court proceedings do not directly enjoin the state court; the federal courts enjoin the litigants. *Younger* v. *Harris*, 401 U.S. 37, 39 (1971) (injunction against prosecutor not court). Nevertheless, this Court long has recognized the serious injury to federalism arising out of those injunctions, which is the basic rationale for *Younger* abstention. *See, e.g., Moore* v. *Sims*, 442 U.S. 415, 434 (1979).

[3] *See, e.g., Lewis* v. *Casey*, 116 S. Ct. 2174, 2183 (1996) (setting aside federal court regulation of prison libraries); *id.* at 2196 (Thomas, J., concurring) (pointing out "the danger of continuing to afford federal judges . . . virtually unbridled equitable power"); *Missouri* v. *Jenkins*, 115 S. Ct. 2038 (1995) (striking down interdistrict desegregation remedy for intradistrict violation as excessive).

Missing from this litany is any suggestion that the public schools will be better able to manage disciplinary problems by reliance upon the procedures of the IDEA when school officials are confronted by juvenile delinquency or criminal misconduct by students. Also missing from this laundry list of considerations is the importance of state law and the state's juvenile justice system and the importance of allowing that system to operate without unwarranted interference from federal courts. It is this "arrogation of federal power" that the Fourth Circuit condemned in *Riley* and that ultimately warrants review by this Court.

CONCLUSION

For the foregoing reasons and those stated in the petition, the petition for a writ of certiorari should be granted. If the Court should conclude that the case has become moot, then the judgment should be vacated and the matter remanded to the district court for dismissal of the complaint.

Respectfully submitted,

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